

# Increasing financial reporting thresholds for ACNC-registered charities

A consultation paper  
February 2021



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*Material used 'as supplied'.*

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# Consultation Process

## Request for feedback and comments

You are invited to lodge a written submission addressing the consultation questions which can be found on page 10. Alternatively we have provided a short survey you can complete to register your views.

### Closing date for submissions: 21 March 2021

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# Increasing financial reporting thresholds for ACNC-registered charities

## Introduction

The charity sector is broad and diverse, as well as large. It covers entities working in aged care, education and social services, as well as the environment, culture and the arts. Organisations within the sector range in size from the very small, with no paid employees, operating in a single jurisdiction, through to entities with billion dollar revenue and many employees, working nationally. Charity structures range from unincorporated associations through to public companies. Given this diversity, it is no surprise that an individual charity can be regulated by a number of state, territory and federal bodies, including the national charities regulator, the Australian Charities and Not-for-profits Commission (ACNC<sup>1</sup>), and, where a charity is an incorporated association, or authorised to fundraise, by relevant state and territory authorities.

Multiple regulators, at the various levels of government, can result in charities facing a large regulatory burden as they seek to fulfil their charitable purposes. In recognition of this, Commonwealth, state and territory governments have been working since 2014 to harmonise the reporting arrangements and obligations across jurisdictions for ACNC-registered charities. In light of this, the proposal to increase the financial reporting thresholds for ACNC-registered charities is being implemented with a view to maintaining the harmonisation across the various state and territory (State) jurisdictions achieved to date<sup>2</sup>. The purpose of this paper is to seek your views on this proposal.<sup>3</sup>

## Context

This proposal arises from the independent review of the ACNC, titled *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review 2018* (ACNC Review), which recommended increasing the financial reporting thresholds for ACNC-registered charities (Recommendation 12 of the ACNC Review).

The ACNC Review recommendation stated:

*“Registered entities be required to report based on size. . . , with thresholds of less than \$1 million for a small entity, from \$1 million to less than \$5 million for a medium entity and \$5 million or more for a large entity.”*

The Commonwealth Government supported the recommendation, but noted the importance of avoiding unintended consequences for charities and committed to consult with the States on the appropriate level of revenue thresholds for minimum reporting requirements, before proceeding with legislative change.

As a result, the Commonwealth Treasurer presented the proposal to the Council on Federal Financial Relations, where State Treasurers agreed that, in the context of COVID-19 and supporting charities to

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<sup>1</sup> While it is not mandatory for charities to register with the ACNC, registration is required before an organisation can receive charity tax concessions from the Australian Taxation Office (ATO).

<sup>2</sup> Any increases to thresholds would be subject to each jurisdiction’s Cabinet and legislative processes.

<sup>3</sup> While the scope of this proposal is limited solely to increasing financial reporting thresholds for ACNC-registered charities, because of the impact this may have on all incorporated associations, issues relating to incorporated associations have also been considered in this paper.

focus their resources on assisting vulnerable communities, this reform was significant and important. The Council on Federal Financial Relations has asked that a framework for increasing harmonised financial reporting thresholds across jurisdictions be announced by 30 June 2021. The Thresholds Working Group, comprised of Commonwealth and State officials, was tasked with developing this framework.

As part of developing the framework, the Thresholds Working Group is seeking the views of stakeholders on the issues associated with increasing financial reporting thresholds.

## Current reporting requirements and thresholds

ACNC reporting requirements for registered charities are proportional to the size of the charity (small, medium or large), determined on the basis of annual revenue. The current thresholds for each tier is set out in Table 1. The ACNC currently requires all registered charities, regardless of their size, to submit an Annual Information Statement. In addition, medium and large charities are obliged to provide the ACNC with financial reports. These financial reports must be either reviewed (medium charities) or audited (large charities) by a qualified professional, as set out in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act). The provision of such information allows the ACNC to ensure that charities remain appropriately governed and are focussed on their charitable purpose.

**Table 1: Current thresholds for financial reporting for ACNC-registered charities**

Charity size	Current annual revenue threshold	ACNC Reporting requirements
Small	less than \$250,000	ACNC Annual Information Statement <sup>4</sup>
Medium	\$250,000 or more and less than \$1 million	Annual Information Statement and reviewed or audited financial report
Large	\$1 million or more	Annual Information Statement and audited financial report.

### Impact of charity structures on reporting requirements

Charities can be established using various structures. Three common types of charity structure are companies limited by guarantee, incorporated associations and unincorporated associations<sup>5</sup>. A charity will establish its structure depending on its needs and its future plans. For example if a charity plans to operate in multiple states, it may consider setting up a company limited by guarantee. A charity seeking legal indemnity for its members, and one that plans to hold assets, but which plans to operate solely in a single state may decide that an incorporated association is appropriate for its structure. A charity which plans to remain small, hold no assets, and operate using only volunteers may decide that the unincorporated structure is most appropriate for it.

<sup>4</sup> The Annual Information Statement includes information about the charity, its governance and activities, and basic financial information (revenue, expenses, assets and liabilities). Although basic religious charities are required to submit an Annual Information Statement, they are not required to provide financial information or financial reports regardless of size.

<sup>5</sup> These three are not the only type of structure available to charities, and have been used for illustrative purposes only.

Different structures will result in different regulatory and reporting regimes, including regulation governed by the Commonwealth (for example the Australian Securities and Investment Commission (ASIC)) or the States (such as the New South Wales Office of Fair Trading).

If an ACNC-registered charity is an incorporated association, as well as its ACNC reporting requirements, it will also have a separate reporting requirement to the state where it is incorporated, and possibly different thresholds at which these requirements begin. There are approximately 18,000 ACNC-registered charities which are also incorporated associations.

In recent years, the ACNC and States have made significant progress in reducing the reporting burden for charities that are incorporated associations.

- Victoria and Western Australia have legislated reporting thresholds for all incorporated associations mirroring those currently set out in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), but maintain different reporting requirements.
  - As well as identical thresholds, Victoria and Western Australian also have in place legislative instruments which mean that as long as an ACNC-registered charity is meeting its reporting obligations to the ACNC, they do not need to provide any additional information specific to their state of incorporation.
- South Australia, Tasmania and the Australian Capital Territory have put in place exemptions for ACNC-registered charities from needing to also meet state reporting requirements as long as the charity remains registered with the ACNC (and therefore is submitting annual reports to the ACNC). Queensland has an exemption currently under consideration but not yet in force.
  - This means both the reporting thresholds and reporting requirements for registered charities are aligned. In other words, a charity does not need to provide any additional information to the ACNC or to the State regulator.
- New South Wales and Northern Territory<sup>6</sup> maintain different reporting thresholds and reporting requirements relative to the ACNC, but allow entities to report all required information to the ACNC.

The harmonisation arrangements are aimed at reducing the regulatory burden on incorporated associations that are registered with the ACNC, while still maintaining transparency over charity operations and finances.

Attachment A sets out details on incorporated association regulation state by state.

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<sup>6</sup> Northern Territory requires all incorporated associations to audit their financial reports, regardless of size, due to the unique composition of the population establishing incorporated associations in the Northern Territory.

## Proposed new thresholds for financial reporting for ACNC-registered charities

The proposed new reporting thresholds for ACNC-registered charities are set out in Table 2 below.

**Table 2: Proposed thresholds for financial reporting for ACNC-registered charities**

Charity size	Proposed annual revenue threshold	Minimum ACNC Reporting requirements
<b>Small</b>	less than \$500,000	ACNC Annual Information Statement
<b>Medium</b>	\$500,000 or more and less than \$3 million	Annual Information Statement and reviewed financial report
<b>Large</b>	\$3 million or more	Annual Information Statement and audited financial report.

The proposed thresholds are lower than those recommended by the ACNC Review Panel. In proposing these reporting thresholds, Commonwealth and State Governments are seeking to balance a reduction in regulatory red tape while maintaining transparency to promote accountability, public trust and confidence in the sector.

By increasing the financial reporting thresholds for the ACNC, it is intended that the current level of harmonisation of reporting requirements for charities across jurisdictions will be retained, subject to formal agreement by each jurisdiction. This ensures that there is no increase to the regulatory burden on charities.

### Benefits of increasing reporting thresholds

The clear benefit of the reform for charities is that it will decrease professional service expenses for almost 6,800 charities that move to a lower threshold (representing more than 10 percent of the sector).

Approximately 3,300 charities would move from the medium category to the small category, and therefore no longer be required to produce reviewed financial reports. This would save these charities around \$2,400 in professional service expenses annually.

Nearly 3,500 charities would move from the large category to the medium category, and therefore no longer be required to produce audited financial reports. These charities would save around \$3,000 in professional service expenses annually.

This will allow these charities to redirect their resources to fulfilling their charitable purpose, including helping vulnerable Australians. This will support the charity sector at a time when, for many charities, donations have plummeted, access to volunteers is constrained, and demand for services has increased.

Table 3 below illustrates the number of ACNC-registered charities that would see a reduction in their reporting requirements under the proposed new thresholds. The table separates out



ACNC-registered charities that are also incorporated associations from those ACNC-registered charities that use a different structure. It also provides data on the number of ACNC-registered incorporated associations which would be impacted in each jurisdiction.

**Table 3: ACNC-registered charities that would potentially change tiers under proposed thresholds**

	All other legal structures	Incorporated associations								Total incorporated	Total
		NSW	VIC	QLD	SA	WA	TAS	ACT	NT		
Charities# moving from medium to small	1337	594	516	343	151	227	77	49	20	1977	3314
Charities moving from large to medium	1825	480	367	238	171	239	62	56	45	1658	3483
<b>Total charities impacted</b>		1074	883	581	322	466	139	105	65	3635	6797

\*Data calculated using 2018 Annual Information Statement data sourced from data.gov.au. Does not include basic religious charities. All data sourced from ACNC-registered charities as submitted to the ACNC.

#Any reference to charities in the table above is to ACNC-registered charities.

**Question 1:** Do you consider the proposed new thresholds are suitable? If no, why? If no, what thresholds do you consider appropriate to balance regulatory red tape and the need for accountability and transparency?

## How accountability and transparency will be retained

While over 3,300 charities will move from medium to small, and will no longer be required to submit reviewed financial reports to the ACNC, they will still be required to submit an Annual Information Statement, which includes information about the charity, its governance and activities and basic financial information (revenue, expenses, assets and liabilities).

Improvements in the information being collected in the Annual Information Statement, through the simultaneous implementation of other recommendations in the ACNC Review, will increase transparency of all ACNC-registered charities. These improvements include mandating the reporting of related party transactions. The ACNC is also implementing improved reporting on charity activities which will further assist with transparency.

The ACNC will continue to monitor compliance with the ACNC Act, including that charities use their resources according to their charitable purposes, and will continue to take action where required. The ACNC will also continue to ensure that all Annual Information Statements are made available on

the Charity Register, for public scrutiny. Finally, the ACNC will continue to provide data from incorporated association ACNC-registered charities to States to allow States to continue to regulate their incorporated associations.

## Key consultation topics relating to implementation

While the Thresholds Working Group considers there are many benefits to increasing harmonised reporting thresholds across jurisdictions, it has also identified four challenges with implementing this change. These challenges are set out in this section for your consideration and comment.

### Timing of implementation

By 30 June 2021, the Council on Federal Financial Relations intends to announce the new ACNC financial reporting thresholds and the commencement date for their implementation.

While the Commonwealth Government can increase the ACNC reporting thresholds with relative ease (through changes to the regulations), most jurisdictions will need to change legislation or regulations for incorporated associations to ensure harmonisation continues, or to ensure that reporting thresholds for ACNC-registered incorporated associations and all other incorporated associations in their jurisdiction remain harmonised.

There are competing high priority reform agendas being implemented by States which reduces resources to implement this reform, and legislative capacity to introduce changes into Parliaments.

Failure to align timing of the increased reporting thresholds may delay the reduction in the regulatory burden faced by charities that are incorporated associations, as impacted charities may need to continue to meet the higher reporting requirements for incorporated associations.

Table 3 above provides information on the number of ACNC-registered incorporated associations in in each jurisdiction that will be impacted if legislation or regulations are not changed in a harmonised way.

ACNC-registered charities that are incorporated associations in South Australia, Tasmania and the Australian Capital Territory will immediately benefit from the increases in ACNC reporting thresholds via changes to Commonwealth regulation. This is because their State legislation currently provides that an ACNC-registered entity is exempt from state reporting requirements (including thresholds) as long as the charity is meeting its ACNC reporting requirements. Victoria also has an exemption in place via a legislative instrument which would also ensure immediate relief to ACNC-registered associations incorporated in Victoria.

States and the Commonwealth will work to ensure that implementation of higher reporting thresholds is harmonised where possible. States have recently agreed to implement a cross-border recognition model for fundraising (see below). States will consider aligning progression of these two reforms, where feasible, to facilitate government approvals and legislative changes.<sup>7</sup>

**Question 2:** In your view, is it more important for the ACNC to increase reporting thresholds as soon as Commonwealth legislative priorities allow, or for the increased thresholds to be increased simultaneously across all jurisdictions consistent with a longer timeframe?

**Question 3:** What lead in time would you consider suitable for charities to make the necessary changes to their reporting processes?

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<sup>7</sup> Noting that any increases to thresholds would be subject to Cabinet approval in each jurisdiction.

## Creating different reporting thresholds for ACNC-registered and non-ACNC-registered entities

This reform is focused solely on ACNC-registered charities. The incorporated associations that are registered with the ACNC are a small subset of the total number of incorporated associations in each State. For example, in Queensland there are approximately 22,000 incorporated associations, of which just over 2,700 are registered with the ACNC<sup>8</sup>.

In some States, all incorporated associations currently have the same reporting requirement thresholds (such as Victoria and Western Australia). In others, there is a difference between ACNC-registered incorporated associations reporting requirements and requirements for all other incorporated associations.

If reporting thresholds are increased solely for ACNC-registered incorporated associations, this may raise issues of consistency and equity across all incorporated associations.

It is a decision for each State to make as to whether to also increase thresholds for incorporated associations that are not registered charities. Some States will be holding separate consultations on incorporated association regulation later in 2021, which will provide an opportunity for considering this question further.

- Queensland will be undertaking consultations on proposed exemptions from reporting requirements, and reporting thresholds for incorporated associations and Collections Act entities that will not be exempted from reporting to the Queensland Government. This will occur under the process for remaking the *Associations Incorporation Regulation 1999*.
- Later this year, Western Australia will undertake a legislated review of its *Associations Incorporation Act 2015*.
- South Australia is also progressing its review of the *Associations Incorporation Act 1985 (SA)*, which will include a separate consultation on broader reform of the regulation of associations in South Australia.

While it may be possible to increase reporting thresholds for all incorporated associations, this then raises issues of whether these thresholds are fit-for-purpose, given the various purposes States have for collecting information from incorporated associations. Incorporated association reporting is designed to provide accountability to members and to government.<sup>9</sup>

**Question 4:** In your view, if non-ACNC-registered incorporated associations were required to report similar financial information to that which ACNC-registered incorporated associations provide to the ACNC, would this provide sufficient accountability and transparency, including for the purposes of members, donors and the interested public?

**Question 5:** What, if any, issues do you consider potential differences in reporting thresholds for charity and non-charity incorporated associations will cause? Why?

<sup>8</sup> Data on ACNC-registered associations incorporated in each state is derived from publicly available data on data.gov.au, and as with Table 1 data is provided by charities.

<sup>9</sup> Question 4 seeks to draw out your views on the information interested parties require. It does not seek to commit any State to implementing changes to their reporting regimes, noting that these reports are also used for State Government purposes.

## Overlap with the regulation of fundraising

In December 2020, the Commonwealth and States agreed to establish a cross-border recognition model to harmonise charitable fundraising regulation. Under the model, a charity registered with the ACNC would be deemed to hold a local authority in each participating jurisdiction.

States (except the Northern Territory) require those undertaking fundraising activities (including ACNC-registered charities) to lodge annual financial reports. All States, except New South Wales and Queensland, currently accept the financial report a charity lodges with the ACNC as meeting their fundraising reporting requirements.

Queensland, under the *Collections Act 1966*, currently requires all entities conducting fundraising, regardless of size, to submit audited financial statements. Recent legislative amendments provide for an exemption power (by regulation), and exemption is under active consideration.

New South Wales is currently working through implementation of the recommendations from the *Bergin inquiry on the RSL NSW's charitable fundraising activities* (Bergin Report). This response committed the Government to maintaining reporting thresholds for authorised fundraisers, currently set at \$250,000.

The increased ACNC reporting thresholds will not result in added regulatory burdens for charities that undertake fundraising.<sup>10</sup> This will only apply if those states continue to accept ACNC reports, and if the reporting requirements for fundraising in New South Wales and Queensland do not change.

## AASB NFP Reporting Framework

**Question 6:** In your opinion, is the Thresholds Working Group overlooking any issues concerning the nexus between fundraising reporting requirements and financial reporting requirements for ACNC-registered charities?

The Australian Accounting Standards Board (AASB) is currently working on a project to create a fit-for-purpose not-for-profit financial reporting framework. This has direct relevance to ACNC-registered charities, as the ACNC requires financial reports to include certain information as set out in specified AASB standards. Changes to the AASB standards will change the reporting charities must undertake.

The new not-for-profit financial reporting framework would replace the ability for not-for-profits to prepare special purpose financial statements under AASB Standards resulting in more proportionate and consistent financial reporting for charities and other not-for-profit entities.

The AASB is currently developing a discussion paper for public consultation on the proposed future not-for-profit financial reporting framework. It is anticipated that consultation will commence in the second half of 2021.

At this stage, it appears unlikely that the timing for the AASB's not-for-profit financial reporting framework will align with the timing for increasing financial reporting thresholds for ACNC-registered charities, with the AASB framework due to be implemented later, subject to approval.

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<sup>10</sup> While this proposal will not add a regulatory burden, it will also not remove any duplicative reporting burden. This is because this reform does not specifically address fundraising issues.

## Consultation questions

Below is a consolidated list of the consultation questions found throughout this document, for ease of reference.

1. Do you consider the proposed new thresholds are suitable? If no, why? If no, what thresholds do you consider appropriate to balance regulatory red tape and the need for accountability and transparency?
2. In your view, is it more important for the ACNC to increase reporting thresholds as soon as Commonwealth legislative priorities allow, or for the increased thresholds to be increased simultaneously across all jurisdictions consistent with a longer timeframe?
3. What lead in time would you consider suitable for charities to make the necessary changes to their reporting processes?
4. In your view, if non-ACNC-registered incorporated associations were required to report similar financial information to that which ACNC-registered incorporated associations provide to the ACNC, would this provide sufficient accountability and transparency, including for the purposes of members, donors and the interested public?
5. What, if any, issues do you consider potential differences in reporting thresholds for charity and non-charity incorporated associations will cause? Why?
6. In your opinion, is the Thresholds Working Group overlooking any issues concerning the nexus between fundraising reporting requirements and financial reporting requirements for ACNC-registered charities?

Thank you for taking time to engage on this important issue.

## Attachment A: Regulatory requirements for ACNC charities that are incorporated associations

	Exempt from state reporting requirements	Report once to ACNC	Current Revenue Tiers triggering reporting requirements	Auditor/Auditing Requirements	Accounting information specified	Fundraising requirements
<b>NSW</b>	No	Yes	<u>Tier 1</u> Revenue >\$250,000, assets >\$500,000 <u>Tier 2</u> – any other association	Yes	Yes	Yes
<b>Victoria</b>	Yes	Yes	As per ACNC’s current tiers	Yes	Yes	Yes, can report via the ACNC
<b>Queensland</b>	Under consideration <sup>11</sup>	N/A	<u>Level 3</u> : Revenue < \$20,000 and Assets < \$20,000 <u>Level 2</u> : not level 1 or 3 <u>Level 1</u> : Revenue > \$100,000 or assets > \$100,000	Yes	Yes	Yes <sup>12</sup>
<b>Western Australia</b>	No	Yes	As per ACNC’s current tiers	Yes	Yes	Yes, ACNC-registered entities are exempt

<sup>11</sup> Legislative amendments passed in June 2020 provide for the ability to exempt (by regulation) a class of incorporated association from local reporting requirements. This exemption regulation is under active consideration.

<sup>12</sup> Legislative amendments passed in June 2020 provide for the ability to exempt (by regulation) a class of entity authorised to conduct appeals for support from the reporting requirements of the Collections Act 1966. The exemption regulation is under active consideration.

<b>South Australia</b>	Yes	N/A	<u>Prescribed Association</u> : Revenue >\$500,000	Yes	Yes	Yes, ACNC-registered entities are exempt
<b>Tasmania</b>	Yes <sup>13</sup>	Yes	As per ACNC's current tiers	Yes	Yes	Associations incorporated in Tasmania exempt
<b>ACT</b>	Yes	N/A	<u>Small association</u> : revenue <\$400,000 <u>Medium</u> : Revenue >\$400,000 but < \$1,000,000 <u>Large</u> : Revenue > \$1,000,000	Yes	Yes	Yes, ACNC-registered entities are exempt
<b>Northern Territory</b>	No	Yes	<u>Tier 1</u> : not Tier 2 or 3 <u>Tier 2</u> : Revenue >\$25,000 or assets >\$50,000 <u>Tier 3</u> : Revenue >\$250,000 or assets > \$500,000	Yes	Yes	No
<b>Current ACNC</b>	NA	N/A	<u>Small</u> : Revenue <\$250,000 <u>Medium</u> : Revenue >\$250,000 and less than \$1,000,000 <u>Large</u> : Revenue >\$1,000,000	Yes	Yes	No

Explanatory notes on table

1. The column Auditor/Auditing requirements indicates that the legislation for incorporated associations in the relevant state specifies the requirements for an auditor or the audit to meet the reporting requirements for that state, even if these requirements are in place for just one tier, or under certain circumstances.. Jurisdictions across Australia have different criteria in terms of who can conduct an audit. For example, in the Northern Territory a Tier 1 incorporated association must have its financial statements audited by a person who is not a member of the association, is not the spouse, de facto

<sup>13</sup> If meeting ACNC reporting requirements

partner, business partner, employer or employee of a member of the association, or is not the spouse, de facto partner or business partner of an employee of a member of the association. The legislation governing incorporated associations in Northern Territory does not specify other qualifications for a Tier 1 auditor.

2. In a similar way, the column Accounting information specified does not refer to the Australian Accounting Standards, but rather indicates that the legislation governing incorporated associations requires specific information to be included in financial statements, or that certain standards must be met.
3. Regulation of fundraising is a state responsibility, and sits outside regulation of incorporated associations. However, due to the overlap of incorporated associations that also conduct fundraising, information on fundraising requirements has also been included in the above table to indicate the breadth of the reporting requirements charities registered with the ACNC face where there is not harmonisation.